

No. 10705

IN THE  
United States Circuit Court of Appeals<sup>4</sup>  
FOR THE NINTH CIRCUIT

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DIESEL SCREW "BETSY ROSS," PETER CEKALOVICH,  
DOMINIC MRATINICH and FRANK MULJAT,  
*Appellants and Cross-Appellees,*  
*vs.*

STEVE RULJANOVICH,  
*Appellee and Cross-Appellant.*

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BRIEF OF APPELLEE.

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DAVID A. FALL,  
388 West Seventh Street, San Pedro, Calif.,  
*Proctor for Appellee.*

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PAUL P. O'BRIEN,

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## BRIEF OF APPELLEE.

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### Preliminary Statement.

There are two questions presented for decision by the appeal of the Diesel Screw "Betsy Ross," Peter Cekalovich, Dominic Mratinich and Frank Muljat.

First: Is a seaman, injured in the course of his service to his vessel, occurring on land, subject to the Workmen's Compensation Act of the State of California, or are his remedies confined to maintenance, cure and wages, under the Laws of Admiralty?

Second: Is a seaman entitled to recover his wages for the period of his employment when injured during that period and rendered unable to return to his employment at anytime during that period?

## POINT I.

### Can the State of California Deprive a Seaman of His Rights to Wages, Maintenance and Cure?

This question has been definitely settled by the United States Supreme Court in the cases of *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U. S. 36, 63 S. Ct. 488, 87 L. Ed. 596, *Aguilar v. Standard Oil Co.*, 318 U. S. 724, 63 S. Ct. 930, 87 L. Ed. 1107, and *Norton v. Warner*, .....U. S. ...., 64 S. Ct. 747, 88 L. Ed. 606. So conclusive are these decisions, there can be no room left for argument.

It seems of outstanding importance and significance that appellant's counsel represented the Occidental Indemnity in the matter of *Occidental Indemnity Co. v. Industrial Accident Commission*, 24 Advance California Decisions 305, 1944 A. M. C. 102 (affirming 61 A. C. A. 503), 143 Pac. (2d) 58 in the matter in which the Supreme Court of the State of California determined that the rights of appellee were confined to maritime jurisdiction, and that this case "falls clearly within the reasoning in the O'Donnell and Aguilar cases \* \* \*.", and that the Industrial Accident Commission of the State of California had no jurisdiction in the matter.

The cases cited by appellants on page 11 of their opening brief have been adequately disposed of and explained in the case of *Occidental Indemnity Co. v. Industrial Accident Commission*, *supra*, excepting *Smith & Son v. Taylor*, 276 U. S. 179, 72 L. Ed. 520, 48 S. Ct. 228, and

*Sultan Railway Co. v. Dept. of Labor and Industries of the State of Washington*, 277 U. S. 135, 72 L. Ed. 820, 48 S. Ct. 505. The first of these cases involved the claim of a longshoreman who fell from a staging, extending from the dock, while engaged in unloading a boat. The second involved a log handler injured while engaged in placing logs in booms on navigable waters of the United States. Neither case supports the contention of appellant that the State of California can deprive a seaman, *injured in the service of his ship*, of his right to maintenance, cure and wages.

A seaman's right to maintenance and cure is implied in *his contract of employment*.

*The Osceola*, 189 U. S. 158 (at 172), 47 L. Ed. 760 (at 763);

*Harden v. Gordon*, 2 Mason 541—Fed Case No. 6,047;

*Cortes v. Baltimore Insular Lines*, 287 U. S. 367, 53 S. Ct. 173, 77 L. Ed. 368.

"A seaman's contract contemplates the application of the general maritime law and that law confers the right to maintenance and cure in case of illness or injury incurred, irrespective of negligence, while he is in the ship's service whether such illness originates on land or upon navigable waters the seaman's admiralty rights to maintenance and cure have a scope as broad as his employment."

1 *Benedict*, 6th Ed. 61.

